

#### 17.05A.130 - Shoreline Master Program procedures.

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**B. Shoreline permit application requirements.** A complete application for a shoreline substantial development, conditional use, or variance permit shall contain, at a minimum, the following information:

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7. A general description of the property as it now exists including its physical characteristics and improvements and structures; and

8. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

- a. The boundary of the parcel(s) of land upon which the development is proposed;
- b. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location, provided that, for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, a description of the field indicators observed and rationale for determination shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline:
  - (i.) Where a conflict or dispute arises between an applicant's determination of ordinary high water mark and the County's determination, the applicant and the County shall each provide a written justification for their individual ordinary high water mark determinations to the Department of Ecology.
  - (ii) The Department of Ecology shall make the final ordinary high water mark determination based on their own investigation and the information provided by the applicant and the County.
- c. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area;

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**C. Permit review process and approving authority.**

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2. Shoreline exemptions are subject to a Type I application and shall be subject to the land use review process described in chapter 16.19.
3. Unless the underlying approval is classified as a Type III decision, shoreline substantial development permits, shoreline conditional use permits, and shoreline variances, are Type II applications and shall be processed and subject to the land use review process

outlined in chapter 16.19, except that shoreline substantial development permits, shoreline conditional use permits, and shoreline variances shall all require a preliminary application meeting prior to application submittal. The Shoreline Administrator may refer a shoreline substantial development permit application, shoreline conditional use application, or shoreline variance application to the Hearing Examiner for a public hearing and decision when requested by the Applicant or when the Shoreline Administrator determines that such action is prudent based on the significance of public comments received, or based on the scale and scope of the proposal.<sup>4</sup> Determinations of the Shoreline Administrator regarding applicability of the SMP, exemptions and application requirements shall be processed as Type I decisions pursuant to chapter 16.19.

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7. A notice of application shall be issued for all shoreline permit applications as provided for in [chapter 16.19](#), which is consistent with WAC 173-27-110. The public comment period for the notice of application for a shoreline permit shall be not less than thirty (30) days, per WAC 173-27-110(2)(e).
8. Special procedures for Washington State Department of Transportation projects.
  - a. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
  - b. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.
9. All applications for a permit or permit revision shall be submitted to the Department of Ecology, as required by WAC 173-27-130 or as subsequently amended.
10. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. A permit revision shall be consistent with provisions of WAC 173-27-100. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Master Program and the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
11. After county approval of a conditional use or shoreline variance permit, the county shall submit the permit to the Department of Ecology for the Department's approval, approval with conditions, or denial, as provided in WAC 173-27-200. The Department shall transmit its final decision to the county and the applicant within thirty (30) calendar days of the date of submittal by the county.
12. After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

- a. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.
  - b. Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:
    - (i) For projects that only require a Substantial Development Permit: the date that Ecology receives the County's decision.
    - (ii) For a Shoreline Conditional Use Permit (SCUP) or Shoreline Variance (SVAR): the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the County
    - (iii) For SDPs simultaneously mailed with an SCUP or SVAR to Ecology: the date that Ecology's decision on the SCUP or SVAR is transmitted to the applicant and the County
13. Each permit issued by the county shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of filing with the Department of Ecology, per WAC 173-27-190 or as subsequently amended. . Construction, or the use or activity, shall commence within two (2) years after approval of the permits. Authorization to conduct development activities shall terminate within five (5) years after the effective date of a shoreline permit. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one (1) year based on reasonable factors.
14. Compliance with permit conditions. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity.
15. Responsibilities of Department Director and Planning Commission.
- a. Director.
    - (i). The director makes written recommendations to the decision-maker regarding shoreline permit applications, provides technical and administrative assistance to the hearing examiner as required, and provides such technical assistance to the planning commission and County council as may be needed; and
    - (ii). The director has the overall administrative responsibility for the SMP including:
      - A. Establishing the procedures and preparing the forms deemed essential for the administration of the SMP;
      - B. Advising applicants for permits and other interested persons of the policies, regulations, and procedures established by the SMP and the SMA;
      - C. Making administrative interpretations of the SMP, as necessary;
      - D. Collecting required fees;
      - E. Determining that applications are proper and complete prior to review;

F. Making field inspections; and

G. Seeking compliance with the provisions of the SMP and the SMA and with conditions attached to a shoreline permit issued by the County.

- b. The department and planning commission have authority to review and recommend revisions to the SMP

**Commented [MP1]:** From San Juan County, adapted for Island County

#### D. Shoreline Master Program review and amendments.

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5. The SMP review and update process shall be consistent with the requirements of WAC 173-26 or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

6. Amendments or revisions to the Island County Shoreline Master Program, as provided by law, are effective 14 days from Ecology's written notice of final action.

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#### E. Shoreline substantial development permits and exemptions

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##### 2. Exemptions from substantial development permit requirements.

a. Exemptions shall be narrowly construed in accordance with WAC 173-27-040(1). A use classified as a shoreline conditional use or a use not named or contemplated is allowed only as a shoreline conditional use and is ineligible for shoreline permit exemption.

b. Permit exemption letters shall be prepared for projects requiring Federal Rivers and Harbors Act section 10 permits and/or Federal Clean Water Act section 404 permits.

c. Key terms used in this section are defined in the definitions sections, including: appurtenance, consumer price index, normal maintenance, normal repair, normal protective bulkhead, shoreline stabilization, and emergency.

d. The following, as defined in WAC 173-27-040, are not considered to be substantial developments:

- (i) Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand and forty seven dollars (\$7,047.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five (5) years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include

the fair market value of any donated, contributed or found labor, equipment or materials;

- (ii) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

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- (vii) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the county and state agency having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed 250 cubic yards and which does not involve placement of fill waterward of the Ordinary High Water Mark or in any wetland. Construction authorized under this exemption shall be located landward of the ordinary high water mark and shall be subject to required setbacks. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

- (viii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private, non-commercial use of the owners, lessee, or contract purchaser of single- and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exemption applies if the fair market value of the dock does not exceed:

- (1) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500.00).

(2) In fresh waters, the fair market value of the dock does not exceed twenty thousand dollars (\$20,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five (5) years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(ix) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of the system waters, including return flow and artificially stored groundwater from the irrigation of lands. WAC 173-27-040(2)(i);

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e. Those shoreline uses which are exempt from a Substantial Development Permit, shall still require Department review through either a Shoreline Exemption or a Limited Review Shoreline Exemption.

(i). Shoreline Exemptions which may be processed as Limited Review are those uses which require minimal interagency coordination and regulatory review and meet all of the following criteria listed below:

- (1) the project is exempt from Substantial Development Permit Requirements per WAC-173-27-040;
- (2) the project qualifies for a Type I permit review per Chapter 16.19 ICC;
- (3) the project does not require a threshold determination under SEPA; and
- (4) the project is not within a wetland, FWHCA, or an associated buffer. Unless, that FWHCA is a marine buffer and neither a threshold determination under SEPA nor a biological site assessment is required; in such a case the project may still be processed as a Limited Review provided it meets the other criteria of this section.

(ii). The following process requirements apply to Limited Review Shoreline Exemptions.

- (1) Multiple projects on a single parcel may be processed as a singular Limited Review, provided that the individual projects meet the criteria for a Limited Review as outlined in this section.
- (2) Prior to issuing a decision on a Limited Review application, the Department may request verification that the original use or structure was legally established.
- (3) If the project is in the vicinity of cultural resources, review from DAHP is necessary.

(iii). Uses that qualify for Limited Review include, but are not limited to, the following.

- (1) Like-for-like replacement of an existing, legally established and permitted structure which is 400 square feet or less in size such as decks, porches, carports, garages or tool sheds. The replacement

shall not include any changes to the size, location, or configuration of the structure or include habitable space.

- (2) Like-for-like replacements of septic components, not to include drainfield replacement or relocation, which do not increase septic capacity by more than ten (10) percent.
- (3) Small additions, that do not exceed 400 square feet or 25% of the existing footprint, whichever is less, where the addition is made to the landward side of an existing residence, such as decks, porches, carports, or garages. Such additions shall not include habitable space.
- (4) Minor accessory structures such as tool sheds, garden sheds, or greenhouses located to the landward side of the shoreline setback.
- (5) Normal maintenance and repair of accessory structures that do not include habitable space.
- (6) Raising a single family home to meet the flood development standards of Chapter 14.02A ICC.
- (7) Retrofits to existing structures to comply with the Americans with Disabilities Act.
- (8) Other uses may qualify for Limited Review subject to department review prior to application submittal.

f. Installation of minor heating, ventilation, and air conditioning (HVAC) appurtenances are exempt from all shoreline permits, including the Limited Review process outlined in item e above, provided that all applicable codes, setbacks, and the following requirements are met:

- (i) the unit is installed at or above grade;
- (ii) the impervious footprint (which includes any concrete pad or other stabilization installed with the HVAC appurtenance) is less than twelve (12) square feet;
- (iii) the impervious footprint does not extend further than three (3) feet from the exterior wall of the building;
- (iv) the impervious footprint does not encroach into the shoreline setback or buffer;
- (v) the HVAC unit does not impact views per this Chapter;
- (vi) for existing structures within the shoreline setback or buffer the unit shall not be placed closer to the shoreline than the existing residence or an existing structure (such as a deck or patio); and
- (vii) installing the HVAC system does not include excavation or the pouring of concrete.

g. Vegetation maintenance activities outlined in ICC 17.05A.110.C are exempt from all shoreline permits, including the Limited Review process outlined in item e above. County review to ensure consistency with all applicable codes, shall still

be required. Such review may include, but is not limited to, the submittal of the following types of information.

- (i) A description of the proposal.
- (ii) A site plan illustrating the location of the proposal in relation to the shoreline, other structures, and steep or unstable slopes.
- (iii) An certified arborist's report.
- (iv) A geotechnical report or analysis.

#### **F. Shoreline conditional use permit.**

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3. In the granting of shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

- a. The county shall have the authority to require the applicant/proponent to prepare special studies, assessments and analyses as necessary to identify and address cumulative impacts including, but not limited to, impacts on fish and wildlife habitat, public access/use, aesthetics, and other shoreline attributes.
- b. Proponents of shoreline use and development shall take the following factors into account when assessing cumulative impacts:
  - (i) Current ecological functions and human factors influencing shoreline natural processes; and
  - (ii) Reasonably foreseeable future use and development of the shoreline; and
  - (iii) Beneficial effects of any established regulatory programs under other local, state, and federal laws; and
  - (iv) Mitigation measures implemented in conjunction with the proposed project to avoid, reduce and/or compensate for adverse impacts.

#### **G. Shoreline Variance**

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6. Variances for a development or uses that will be located waterward of the ordinary high water mark or within any wetland may be authorized provided the applicant can demonstrate all of the following:
- a. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property;
  - b. That the proposal is consistent with the criteria established in this SMP; and
  - c. That the public rights of navigation and use of the shorelines will not be adversely affected.

**Commented [MP2]:** From Jefferson County, adapted for Island County

7. Decision Criteria – Wetland or Fish and Wildlife Habitat Buffer. Where the Shoreline Variance request includes a reduction to a wetland or fish and wildlife habitat area buffer, the applicant shall demonstrate the following:
- Approval of the variance will not adversely impact receiving water quality or quantity.
  - Approval of the variance will not adversely impact any functional attribute of the habitat area.
  - Approval of the variance will not jeopardize the continued existence of species listed by the Federal government or the State as endangered, threatened, sensitive, or documented priority species or priority habitats.
  - The proposal avoids impacts, where possible, and provides mitigation, pursuant to ICC 17.05A.C.7, to the maximum practical extent.
8. In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

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#### K. Moratoria authority and requirements

- Island County has authority to adopting a moratorium control or other interim control on development under RCW 90.58.590.
- Before adopting the moratorium must:
  - Hold a public hearing on the moratorium or control;
  - Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;
  - Notify the department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing.
- The public hearing must be held within sixty days of the adoption of the moratorium or control.
- A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review.
- A moratorium or control may be renewed for one or more six-month period if Island County complies with the requirements in subsection (2) above before each renewal.

Commented [GJ3]: From SMP Periodic Review Guidance

### 17.05A.140 – Nonconforming development.

Nonconforming use or development means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments

thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:

A. In all cases, the burden shall be on the property owner and/or applicant to prove that a use or structure was lawfully constructed or established. For establishing the existence of shoreline stabilization see ICC 17.05A.110.A.5.j.

**Commented [MP4]:** From Pierce County, adapted for Island County

B. Nonconforming Structures.

1. Residential and appurtenant structures (excluding bulkheads, overwater structures or other shoreline modifications) that were legally established and are used for a conforming use, but that do not meet current standards for density, lot size, setbacks and buffers shall be considered a conforming structure. Redevelopment, expansion, or replacement of these residential structures shall be consistent with this Shoreline Master Program, including requirements for no net loss of shoreline ecological functions. Nothing in this section: (a) Restricts the ability of this Master Program to limit redevelopment, expansion, or replacement of overwater structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

2. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Also see the provisions of ICC 17.05A.090.E for shoreline setback, shoreline buffer, and impervious surface modifications permitted without a shoreline variance.

(i). Lateral expansion of structures into areas prohibited by current bulk, dimensional or performance standards shall require a variance, with the following exception.

A. For the replacement of grandfathered factory built homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the replacement of a factory built home with another factory built home that does not have the same size and shape. A proposed increase less than twenty-five percent of the existing home's footprint shall not require a variance.

B. Applications for such replacements shall include a habitat management plan that identifies measures to protect habitat and mitigates for unavoidable impacts. The replacement home may be no closer to the shoreline than the existing residence.

**Commented [MP5]:** From Mason County, adapted for Island County

3. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

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4. Rebuilding After Damage. If a nonconforming development sustains major structural damage due to fire, flood or other natural disaster, it may be reconstructed upon its original site and to the configuration existing immediately prior to the damage, provided:

- (i). The rebuilt structure will not cause adverse effects to adjacent properties or to the shoreline environment; and
- (ii). The site is geologically stable; and
- (iii). No horizontal or vertical expansion or enlargement of the footprint or height, or any degree of relocation, will occur; and
- (iv). No degree of relocation will occur, except to increase conformity, in which case the structure shall be located as far landward as possible or in the least environmentally damaging location relative to the shoreline or any critical area; and
- (v). The submittal of applications for permits necessary to restore the development is begun within one year of the damage. The administrator may waive this requirement in situations with extenuating circumstances such as resolution of an estate, or widespread economic or natural disaster; and
- (vi). The reconstruction is commenced within two years of the issuance of permits. Administrator may allow a one-year extension.

**Commented [MP7]:** From Jefferson County, adapted for Island County

- 5. A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act to the maximum extent feasible;
- 6. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds sixty (60) percent of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP;
- 7. Applications for the movement, replacement, redevelopment, expansion or modification of nonconforming structures must demonstrate that the proposed action will not:
  - (i). Result in a net loss of shoreline ecological functions;
  - (ii). Increase adverse impacts on shoreline critical areas;
  - (iii). Create a new nonconformance or increase the degree of inconsistency with the provisions of this SMP; or
  - (iv). Result in a hazard to people or property.
- 8. To demonstrate no net loss of shoreline ecological functions, an analysis must be provided by the applicant that addresses any:
  - (i). Increase in the quantity of pollutants from the site;
  - (ii). Increase in the quantity of surface runoff from the site;
  - (iii). Decrease in trees and other vegetation within buffers and tree protection zones;
  - (iv). Decrease in the stability of the site and other properties; and
  - (v). Changes to the transport of sediment to and within nearshore areas.

**Commented [MP8]:** From San Juan County, adapted for Island County

#### B. Nonconforming Uses

- 1. Uses that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged

or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in this SMP upon approval of a shoreline variance consistent with 17.05A.090.D.2;

2. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use, but which existed prior to the applicability of the Master Program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use;
3. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
  - (i). No reasonable alternative conforming use is practical; and
  - (ii). The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard;

4. A nonconforming use that is discontinued for a period of twenty-four (24) continuous months shall not be allowed to be re-established as a nonconforming use; and

#### D. Nonconforming lots

1. An undeveloped lot, tract, parcel, site, or division of land located landward of the Ordinary High Water Mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.